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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/586,472

07/18/2006

Ruth Thomsen

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EXAMINER

FOREMAN, JONATHAN M

ART UNIT

PAPER NUMBER

3736

MAIL DATE

DELIVERY MODE

12/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/586,472	Applicant(s) THOMSEN ET AL.	
	Examiner JONATHAN ML FOREMAN	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6,7 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6,7 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/18/09</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 8/18/09 has been placed in the application file, and the information referred to therein has been considered by the examiner as to the merits.

However, references already of record and NPL documents that provide no date, or only a partial date wherein the year of publication is not sufficiently earlier than the effective U.S. filing date and any foreign priority date so that the particular month of publication is not in issue have been lined through (See MPEP 609.04(a)).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 7, line 2 recites "the movable partition". It is unclear if this is referring to the first or second movable partition. Although unclear, the claims have been reviewed by the examiner as best understood at this time in order to continue with the examination.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 6, 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0069235 to Rasa et al. in view of U.S. Patent No. 5,464,360 to Carlson et al. and U.S. Patent No. 5,320,069 Anderson, Jr. et al.

In regard to claims 6, 7 and 11, Rasa et al. disclose a device comprising a first receptacle (9) comprising a perforated outside wall (10)[0029], and a second receptacle (1) connected to the first receptacle, wherein there is an at least partially perforated common separating wall (11) between the first receptacle and the second receptacle, wherein the assassin bug is located in the first receptacle and the animal is located in the second receptacle [0019], and the animal is held against the at least partially perforated common separating wall so that the assassin bug can be positioned against the animal and can withdraw blood from the animal [0019]. However, Rasa et al. fail to disclose the first receptacle having a moveable partition and a piston rod on an opposite end surface from the movable partition to allow the assassin bug can be held in place against the perforated outside wall of the first receptacle. Carlson et al. teach a receptacle (Figure 1) for containing an assassin bug including a moveable partition (22) and a piston rod (24) on an opposite end surface from the movable partition for positioning the assassin bug in place against a perforated outside wall (12) of the receptacle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the first receptacle as disclosed by Rasa et al. to include a movable partition and piston rod as taught by Carlson et al. in order allow for the placement of a desired amount of bugs against the perforated outside wall (Col. 2, line 57 – Col. 3, line 3). Rasa et al. disclose the second receptacle including a disk (7), but fail to disclose the disk being movable. Anderson, Jr. et al. teach a receptacle for holding an animal having a movable disk (22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to

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modify the disk disclosed by Rasa et al. to be movable as taught by Anderson, Jr. et al. in order to restrict movement of the animal (Col. 3, lines 19 - 22).

Response to Arguments

5. Applicant's arguments filed 10/14/09 have been fully considered but they are not persuasive. Applicant asserts that the combination of Rasa et al. in view of Carlson et al. and Anderson, Jr. et al. fail to disclose the limitation "once the blood has been withdrawn, the assassin bug can be held in place against the perforated outside wall of the first receptacle by the first movable partition and blood can be removed from the abdomen of the assassin bug using an injection syringe." However, such a limitation is an intended use recitation. A recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus that differentiates it from a prior art reference disclosing the structural limitations of the claim. *In re Pearson*, 494 F.2d 1399, 181 USPQ 641 (CCPA 1947); *In re Yanush*, 477 F.2d 958, 177 USPQ 705 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); *In re Otto*, 312 F.2d 937, 136 USPQ 458 (CCPA 1963); *Ex parte Masham*, 2 USPQ2d 1647 (BbPatApp & Inter 1987). The combination of Rasa et al. in view of Carlson et al. and Anderson, Jr. et al. disclose each of the claimed structural features. Applicant asserts that Rasa et al. in view of Carlson et al. and Anderson, Jr. et al. fail to disclose "the animal is held against the at least partially perforated common separating wall by the second movable partition so that the assassin bug can be positioned against the animal and can withdraw blood from the animal". However, the Examiner disagrees. Because the terminal wall (7) encloses the animal within the receptacle, it is considered by the Examiner to meet the limitation "the animal is held against the at least partially perforated common separating wall so that the assassin bug can be positioned against the animal and can withdraw blood from the animal". It

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is noted that without terminal wall (7), the animal would not remain in the receptacle and would not be positioned against the common separating wall. It is also noted that the claim does not require the second movable partition to reside in a plane parallel to the perforated common separating wall.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN ML FOREMAN whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. M. F./
Examiner, Art Unit 3736

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736